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THE CANADIAN SECURITY INTELLIGENCE SERVICE

Philip Rosen
Senior Analyst

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THE CANADIAN SECURITY INTELLIGENCE SERVICE

ISSUE DEFINITION

In July, 1984 the major portion of the *Canadian Security Intelligence Service Act* was proclaimed in force. This statute brought into existence a new civilian security intelligence service, and terminated the previous Security Service, which had functioned as part of the RCMP.

Passage of the *Canadian Security Intelligence Service Act* made Canada one of the few western democracies to give its security service an explicit statutory charter. In many ways, it constituted an attempt to bring the security intelligence function under more effective control. It provides a defined mandate for the operations of the agency; it interposes a system of judicially-authorized warrants in the agency's use of intrusive investigative techniques; and it establishes wholly new monitoring and review bodies, which purport to ensure that the agency does indeed act within the limits of its mandate.

While the idea of a statutory charter for the security intelligence service has almost universal support, there has been considerable criticism of its contents. Fundamentally, some contend that it is wrong to remove the security intelligence function from the RCMP; that the loss of the discipline of law enforcement, and of the tradition of, and respect afforded to, the Force is immeasurable. There is also criticism of the extent of the mandate given to the agency - that it goes beyond what is needed to protect Canada's security. Further, many have been highly critical of the new investigative powers - such as mail-opening, and surreptitious entry - that had been legally unavailable to the RCMP Security Service and of the supposed weakness of the control and review mechanisms.

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This review will give a brief background of the legislation, outlining the significant features of the process that led to its passage. It will then deal with the contents of the legislation, and conclude with a treatment of some of its more controversial elements.

BACKGROUND AND ANALYSIS

A. The Origins and Development of the Security Service

The origins of the *CSIS Act* may be found in the report of the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police (the "McDonald Commission"), which was released in 1981. That Commission had been created in 1977 as a result of the revelation of a series of apparently illegal acts and practices carried on by the Security Service of the RCMP. The Commission was to determine the extent and prevalence of investigative practices or other activities "not authorized or provided for by law"; to report the facts of such practices, and advise the government what action should be taken to deal with them; and to advise the government generally on necessary or desirable changes in "policies and procedures regarding national security."

The Security Service which the McDonald Commission began to study in 1977, like many other Canadian institutions, had developed gradually and incrementally. It was subsumed within the RCMP, and had no distinct statutory basis, deriving its authority from a power given to the Governor in Council in the *Royal Canadian Mounted Police Act* to assign certain functions to the Force. It was not until 1975 that the Service was given an explicit mandate, and even that mandate consisted only of a cabinet directive drafted in quite broad terms.

The Security Service had its genesis in certain duties assigned in 1864 by Sir John A. Macdonald to what was to become the Dominion Police Force. These duties included such things as providing security for government buildings, and providing information and intelligence on threats to Canada's security, such as the Fenians. The North West Mounted Police assumed similar functions in the west.

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The security intelligence role of the federal police gradually grew after Confederation through to the first World War, in response to labour unrest, anarchism, and the growth of communism. This role intensified between the world wars. But it was not until the end of the second World War that the security function was removed from the Criminal Investigation Branch of the RCMP, which force had been formed in 1920.

The Gouzenko case led to a new awareness of the necessity for stricter security in government institutions, and for specific counter-espionage and counter-intelligence capabilities to deal with the new aggressive nature of East Bloc activities. In 1946 the Special Branch was created, whose officer in charge reported to the Commissioner of the RCMP. The Branch had the specific responsibility of providing intelligence on espionage, subversion, and of ensuring that federal institutions were staffed by loyal and trustworthy persons. By 1956 the Special Branch had been raised to the directorate level within the RCMP, under the control of an Assistant Commissioner. Finally, in 1970, the Branch was renamed the Security Service under the control and management of a civilian (i.e. not a member of the RCMP) Director General (equivalent to a deputy commissioner) who reported to the Commissioner and to the Solicitor General. (In 1966 the RCMP had become the responsibility of the Solicitor General, when that position was raised to full ministerial status. Prior to that year, the force had been under the authority of the Minister of Justice.)

The 1970 reorganization was principally the result of the Report of the Royal Commission on Security (the "Mackenzie Commission"), which had been issued in 1969. That commission had been formed in 1966 following the widely-publicized case of a lapse of security in a federal institution. Its mandate was to look into security procedures in government, but it was also to inquire generally into the question of Canada's national security. The principal recommendation of the Mackenzie Commission, which derived from this latter element of its mandate, was that a separate civilian security agency be formed. The commission found that it was not appropriate for a law enforcement body like the RCMP to be involved in security-intelligence work. Security functions were found to

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be incompatible with the role of ordinary police; and the Special Branch was found to lack sufficient sophistication and powers of analysis, drawing as it did only on members of the force, to fully discharge the security role. The commission also recommended legislation to deal with the use by the security agency of intrusive investigative techniques, and an improved system of security screening, including an appeal process.

The government rejected "civilianization" of the Special Branch. It did, however, determine to make the security intelligence function "increasingly separate in structure and civilian in nature", in the words of the Prime Minister, within the RCMP. Hence the creation of the Security Service and the appointment of a civilian Director General. The government also pledged to bring more civilians into the Security Service and thereby expand its expertise and increase its flexibility. Another partial response to the Mackenzie Commission occurred in 1974, when s. 16 of the *Official Secrets Act* was passed. That section allowed the Solicitor General to authorize the interception or seizure of communications if satisfied that conduct being investigated fell within a broad definition of activity inimical to national security - including espionage, sabotage, activities of foreign intelligence bodies and political violence.

B. Abuses by the Security Service

The Security Service in the early 1970s was in a precarious position. Its members retained all the extraordinary powers society has accorded to peace officers. It also remained almost exclusively composed of RCMP members who had risen through the ranks. For the force, tight-knit, highly disciplined and loyal, strenuously resisted the infusion of civilian personnel. By the end of the decade there was not a single civilian in an officer-equivalent position in planning or operations of the Security Service.

Thus the service's post-1970 personnel remained essentially similar. But organizationally they found themselves increasingly independent in matters of policy, budget, and operations. Service employees had the best of both worlds - police powers and a large degree of

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autonomy from the police command structure. This independence was reinforced by the government's policy with respect to the RCMP - "non-interference". Politicians were not to be involved in controlling the police or directing their operations. This is a laudatory and effective principle when one is dealing only with the police who operate in a public context of checks and balances. It is not, however, ideal for a security intelligence agency which, perforce, acts in secrecy; and which, indeed, requires a degree of political control. Because the RCMP was both a police force and a security agency, abuses by the latter element were not immediately apparent, virtually by reason of government policy.

It took the mere pressure of events to disturb the precarious position of the Security Service. The October Crisis of 1970 stunned the government, which found itself with inadequate information as to the nature and scope of Quebec separatism. The government requested the RCMP to undertake a "proactive" strategy in this area - to try and get advance information as to the intentions and activities of nationalist organizations and, if possible, to prevent or "counter" disruptive acts. This the Security Service proceeded to do with a vengeance. It embarked on an extensive campaign of intelligence-gathering, infiltration, harrassment and disruption directed at virtually all stripes of nationalist sentiment in Quebec. In many circumstances the Service committed clearly illegal acts. Three of the most spectacular examples were: the burning down of a barn to prevent a meeting of militant nationalists and American radicals; a break-in at the offices of a left-wing news agency in Montreal, followed by the theft and destruction of some of their files; and a break-in and theft of the membership lists of the Parti Québécois. Operations such as these were not, the McDonald Commission found, ordered by the government. They were generated from within the Service in response to government directions that more be found out about separatism. Quite aside from being illegal, these operations showed a woeful lack of discrimination between true threats and dissent, and were quite heavy-handed. None had any major effect on the organizations targeted, and none brought in intelligence of much importance.

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Although the most spectacular acts of the Security Service were committed in Quebec, they certainly were not limited to that province. Throughout Canada, the Service engaged in a whole series of illegal or improper activities, particularly in relation to left-wing or radical groups. So-called "dirty tricks" were used against perceived threats to national security. In 1975, at the behest of the RCMP, a cabinet directive was issued, setting out the Service's mandate. But this directive merely restated the *status quo*, permitting the Service to "discern, monitor, investigate, deter, prevent and counter" persons engaging in subversive or other activity inimical to national security.

The abuses of the Security Service were not limited to the 1970s, or to excesses in "countering" nationalist or radical threats. It was revealed by the McDonald Commission that some activities such as surreptitious entry, mail-opening, and the gaining of access to supposedly confidential information in the possession of the government, had gone on for many years, in relation to various aspects of national security - from espionage and counter-intelligence to subversion. In many cases, the Commission concluded, the investigative power used was needed but was not authorized by law. The Commission also found that it was not only the Security Service that had engaged in this "institutionalized" wrongdoing. The Criminal Investigation branch also had a long history of abuses in this area.

C. The McDonald Commission's Recommendations

During the four years of its existence, the McDonald Commission conducted an exhaustive review of the Security Service. It catalogued the many illegalities and improprieties. It found, on the whole, that the supposed political masters of the Service were ignorant of its misdeeds. But this exoneration was also an inherent criticism in that the structure of control and accountability was so weak as to allow these things to happen. In the same way, these matters had come to light not by reason of review or audit but as a result of fortuitous disclosures by disgruntled former members of the Service and of pressure by the press and the opposition.

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The report of the McDonald Commission was highly critical of the Security Service. While Canada's basic security needs, particularly in dealing with espionage and the activities of foreign intelligence agencies, had been adequately dealt with, the Commission found that the Service lacked sophistication and analytical ability. In particular, there was an inability to distinguish subversion from dissent and a concomitant anti-left wing bias. The Service also lacked a precise mandate, effective political control and adequate review of its activities.

The principal recommendation of the report was that an entirely separate civilian security agency be formed. The reasons were much like those posited by the Mackenzie Commission. There was a need for a reorientation toward information-gathering and analysis rather than deterring or countering. New personnel was needed. Organizationally, the new agency would have to be politically accountable and subject to strict review. It would not be appropriate to impose this on the RCMP. Law enforcement and security work are incompatible, the report concluded.

The proposed new agency would have a statutory mandate, consisting of a definition of the threats to Canada's security it would be permitted to investigate. The definition would have four elements: espionage and sabotage, foreign interference; political violence and terrorism; and revolutionary subversion - activities directed towards the destruction of the democratic system. The report also recommended that the agency be expressly forbidden from investigating lawful advocacy, protest or dissent. It would also not have the authority to "enforce" security.

The Commission also determined that, in order to be effective, the agency would have to have access to certain intrusive investigative techniques, such as electronic surveillance, surreptitious entry, mail-opening, and the ability to obtain confidential information. But these investigative methods would only be used pursuant to judicial warrant, which would only be issued where a court was satisfied that the matter fell within the mandate. Further, they would not be available against "subversive" threats.

The Commission's agency would be under the management and control of a Director General, who would in turn be responsible to the

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Solicitor General. This minister would play a significant role in the operation of the agency. He would issue directives having to do with its functioning, and would have to authorize applications for warrants. To ensure compliance with the law, the Commission recommended substantial external review of the agency's activities. First there would be the Advisory Committee on Security and Intelligence - an appointed three-member body which would submit operations to continuous review to ensure legality and propriety. It would also investigate complaints, and report to the Minister and Parliament. The second fundamental element of review would be a special joint parliamentary committee. The committee, appointed for the life of a Parliament, would be the ultimate control on the agency. In conjunction with the advisory committee it would, on behalf of Parliament, attempt to ensure that the agency observed its mandate.

D. The Canadian Security Intelligence Service Act

Immediately after the release of the report of the McDonald Commission in August 1981, the government indicated its acceptance of the most fundamental recommendation - the creation of a civilian security service. At the ministry of the Solicitor General a special transitional group was established to translate the Commission's recommendations into legislation.

In May 1983, during the first session of the 32nd Parliament, Bill C-157 was introduced in the House of Commons. That bill would have established the Canadian Security Intelligence Service (CSIS), based on the framework suggested by the McDonald Commission. The bill also made substantial and significant alterations and additions to that framework. Almost immediately it became the cynosure of negative critical comment. It was alleged to be an attack on civil liberties, giving the proposed service extremely wide powers, insulating the government from accountability, and failing to institute a precise mandate or a workable review system. So vehement was public opposition that the government decided against proceeding to second reading, and instead referred the subject matter of the bill to a special committee of the Senate. That

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committee held hearings throughout the summer of 1983, exposing a broad cross-section of public opinion on the bill. It issued its report in November 1983, recommending over 40 changes to the bill so that, in the words of the committee, there might be "a more appropriate balance between collective and individual security."

Following the report, Bill C-157 was allowed to die on the order paper. In the second session of the 32nd Parliament a new Bill, C-9, was introduced which incorporated virtually all the recommendations of the Senate Committee. Given first reading in January 1984, Bill C-9 was referred to the Justice Committee of the House of Commons in March, passed third reading in June, and was proclaimed in force in July and August 1984. The legislation, as passed, is virtually identical to the bill which was introduced in January.

The central provision of the legislation is the definition of "threats to the security of Canada" in s. 2, which comprises the basic limit on the activities of the CSIS. The four elements recommended by the McDonald Commission remain:

a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and

d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

The definition also goes on to stipulate that lawful advocacy, protest or dissent is not within the scope of threats to security.

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The basic function of the service is stated in s. 12 - to investigate, collect, analyze, and retain information and intelligence on security threats. Bill C-157 contained a further provision which expressly permitted the CSIS to "remain informed" about the current economic, social and political climate, from public sources of information. That section at first appeared in Bill C-9, but was eventually deleted as surplusage. By virtue of s. 13, the CSIS is to provide security assessments with respect to individuals to be employed in the government. Finally, by s. 16, the CSIS is given the role of assisting in the collection of "foreign intelligence", intelligence gained from investigation or surveillance of persons who are neither Canadian citizens nor permanent residents, with respect to defence or international affairs. As a result of the Senate committee's recommendations, this function has been more sharply focused on non-Canadians, and may only be undertaken at the written request of the Minister of Defence or the Secretary of State for External Affairs, with the consent of the Solicitor General.

Under Part II of the Act (ss. 21-28), the Federal Court may issue warrants to the service to carry out its functions under ss. 12 and 16. Such warrants allow the full range of investigative techniques to be used, with the exception of access to confidential census data maintained by Statistics Canada. The warrant process contains many safeguards and information requirements which were absent from Bill C-157, but which were added on the recommendation of the Senate Committee. Essentially, they parallel the requirements for warrants to allow electronic surveillance under the *Criminal Code*. A one-year limit is placed on warrants, with the exception of those obtained to investigate a paragraph (d) threat - subversion - which last only 60 days. This provision was added in the House Justice Committee, a partial recognition of the McDonald Commission recommendation that subversion not be the subject of intrusive investigative techniques at all. All warrants are renewable, on re-application to the court.

The Act assigns management and control of the CSIS to the Director, a Governor in Council appointee. The Solicitor General is given an active supervisory role. Originally, Bill C-157 had adopted a model

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borrowed from similar Australian legislation, which would have given the Director the final say on targeting and the release of information, and would not have given the Minister any operational role whatsoever, the ostensible purpose of which was to ensure that the CSIS could not be used for partisan purposes. These provisions elicited considerable public outcry on the ground that they reduced the direct political responsibility of the Minister for the agency in pursuance of the avoidance of a fairly remote danger. They were roundly criticized by the Senate Committee. The Act now provides that the Minister has an override and must approve all warrant applications. Another provision of Bill C-157 which aroused criticism was the defence given to agency employees for such reasonable acts done in pursuance of their duties as were "reasonably necessary". In the Act, this is replaced by s. 20, which gives employees the protection afforded by law to peace officers.

Two aspects of Bill C-157 which survived its revision into the Act had to do with control and review. The Act establishes the office of Inspector General (s. 30) and the Security Intelligence Review Committee (SIRC, s. 34). The former officer, appointed by the Governor in Council, is to monitor CSIS operations and to report to the Deputy Solicitor General and the SIRC on the legality and propriety of those operations. The SIRC is a committee to be composed of up to five Privy Councillors appointed by the Governor in Council after consultation by the Prime Minister with opposition leaders in the House of Commons. It is to conduct a review of CSIS operations and to report to the Minister and Parliament on them. It also has a variety of investigative duties. It deals with complaints about CSIS activities and acts as an appeal board with respect to security assessments and security-influenced decisions under the *Citizenship* and *Immigration Acts*.

A final aspect of the legislation, which was not dealt with by the McDonald Commission, is what was formerly Part IV of the Act (ss. 56-61), now known as the *Security Offences Act*. This Act deals with police and prosecutorial authority to deal with security-related offences. It gives the RCMP "primary responsibility" over the investigation of such offences, in pursuance of which they may enter into agreements with other

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police forces. The *Security Offences Act* also gives the federal Attorney General the power to prosecute security offences and, by fiat, to intervene in, and take over, provincial prosecutions of such offences. Despite considerable provincial criticism of the Act as an impingement on a traditional provincial area of jurisdiction, it remained essentially unchanged as it went through the legislative process.

E. The Controversial Issues

The legislation which emerged from Parliament is far from being the product of consensus. Indeed, the committee proceedings and report stage dealing with Bill C-9 were extremely contentious. Both opposition parties vociferously opposed fundamental elements of it, giving voice to substantial public concern.

Perhaps the most fundamental concern had to do with the removal of the security function from the RCMP and the creation of a civilian service. Several provincial attorneys general, the Progressive Conservative party, some civil liberties groups, and, eventually the New Democratic Party, opposed the change. The principal contention was that, given a clear mandate and efficient review, the RCMP was still best equipped to discharge the security function, having discipline, a long and honourable tradition, an established system of contacts, and being virtually immune from penetration by foreign agencies. Others took the position that the defects in the legislation were so patent that it would be better to maintain the *status quo*.

There was also considerable opposition to the mandate given to the CSIS. This opposition had reference not only to the breadth of the definition, but to the whole idea of a security agency dealing with matters such as "subversion" or "foreign influenced activities". The Canadian Civil Liberties Association, for example, took the position that there was no need for more than a relatively small agency to deal with the distinct threats of espionage or sabotage from foreign nations. Regular law enforcement could deal with the other elements of threat, when the criminal law was contravened.

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The scope of the threats definition is also quite controversial. Some contend that it is so broadly drafted as to bring within its scope a variety of acts having nothing to do with true security. The government took the position that the definition must be read in the context of those provisions which protect lawful dissent and which limit the agency to what is "strictly necessary"; and in the context of the new system of monitoring and review. Given this context, it is said, the definition is reasonable. The "foreign intelligence" function of the agency (s. 16) is also quite contentious. Many find it inherently unreasonable to submit foreign nationals to surveillance if they do not constitute a security threat, but merely can provide Canada with useful information having to do with defence or international affairs. Another area of concern is the scope of the warrant system, which gives the CSIS access to virtually any investigative technique from surreptitious entry to access to doctor-patient confidences.

Most of the remainder of the Act is not particularly contentious, save for two areas having to do with review of the agency. The first has to do with the access to information by the Inspector General and the SIRC. Both bodies are given access to all information in the possession of the CSIS except cabinet documents. These exceptions (see ss. 31(2) and 39(3)) first appeared in Bill C-157 and have been almost universally condemned, critics taking the position that the review bodies should have access to all documents held by the agency in order to fully discharge their important functions. The Senate Committee recommended deletion of the exceptions. And in the House Justice Committee, some government members joined the opposition to vote to remove them. They were, however, restored at report stage in the House. The government took the position that the cabinet system requires utmost confidentiality.

The other area is direct parliamentary oversight of the CSIS. Recommended by McDonald, it was absent from Bill C-157. The Senate committee had also rejected it as impractical, duplicative of the SIRC, and subject to weaknesses in preserving secrecy. Both opposition parties supported the idea of a special parliamentary committee, with access to agency information, in order that Parliament could be assured that the CSIS

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was acting within its mandate. They were not confident that Parliament would get a full picture of agency operations from the SIRC, and pointed to the examples of the Federal Republic of Germany and the United States, to show that such a committee could be workable and successful. The government was firm on this matter, however, and refused to add direct parliamentary oversight.

F. 1984 to Present

The *CSIS Act*, with the exception of Part II (which deals with warrants) was proclaimed in force on 16 July 1984. By virtue of s. 66 all members of the Security Service became employees of the CSIS on that date; and by ss. 3 and 4 the agency came under the control of the Director, Mr. T.D. Finn, who was sworn in on that date. Mr. Finn resigned on 11 September 1987 and was replaced by J. Reid Morden. Part II was proclaimed in force on 31 August 1984. Its proclamation was delayed in anticipation of the appointment of the SIRC, but the September election delayed that appointment. Warrants issued under s. 16 of the *Official Secrets Act* remained in force for up to four months after 16 July 1984.

On 29 November 1984 the new Conservative government announced the initial membership of the SIRC. Its Chairman was Ronald Atkey, a cabinet minister in the Clark government of 1979. There were four other members: Frank McGee, a cabinet minister in the Diefenbaker era; former Liberal Minister of National Defence and Solicitor General Jean-Jacques Blais; former Manitoba NDP Finance Minister Saul Cherniak; and Paule Gauthier, a prominent Quebec City lawyer. The last two individuals were sworn in as Privy Councillors in order to have the necessary qualification for membership; the first two and the Chairman, being former federal cabinet ministers, were already members. On 30 November 1989, John Bassett was appointed chairman of the SIRC and Stewart McInnes was made a member -- both were named for three-year terms. The remaining members, Paule Gauthier, Jean-Jacques Blais and Saul Cherniak, had their terms renewed for two years.

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On 15 February 1985, the first Inspector General was appointed. He was Richard Gosse. Mr. Gosse resigned on 21 December 1987 to become Chairman of the RCMP Public Complaints Commission, effective as of 1 February 1988. Richard Thompson became Inspector General on 18 July 1988. He resigned from that position effective as of 17 January 1992.

On 30 July 1987, the Senate Special Committee on Terrorism and the Public Safety released its Report. Among many other observations and recommendations on the problem of terrorism, the Senate Special Committee:

- Recommended that CSIS co-operate fully with provincial Crown Prosecutors in the prosecution of alleged terrorists - to a degree consistent with the protection of CSIS officers, contacts and ongoing investigations.

- Commented that grafting a clandestine foreign intelligence branch onto CSIS could impair the Service in the pursuit of its current mandate.

- Supported the SIRC's recommendation that CSIS have unlimited access to CPIC.

On 17 August 1987, the Federal Court of Appeal, by a two-to-one majority, held that the warrant-granting provision of the *Canadian Security Intelligence Service Act* (s. 21) is not in violation of the *Canadian Charter of Rights and Freedoms*. In this case, an individual (Atwal), accused of involvement in an attack in B.C. on a Punjabi Cabinet Minister, applied for access to a sworn affidavit in support of a warrant application in Federal Court. Heald J. on 30 April 1987 upheld s. 21 of the *CSIS Act* under the Charter and denied access to the affidavit. On appeal, Mahoney J. and MacGuigan J. not only upheld s. 21 under the Charter, but reversed Heald J. and allowed access to the affidavit with the names of CSIS agents and informants deleted.

On 11 September 1987, Mr. T.D. Finn resigned as Director of CSIS and was replaced by J. Reid Morden, former Assistant Secretary to the Cabinet for Foreign and Defence Policy. Mr. Finn resigned when it was revealed in Federal Court that day that the affidavits behind the warrant in the Atwal case contained inaccuracies and irregularities.

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The Solicitor General on 30 November 1987 released the Report of a three-member independent advisory team chaired by Gordon Osbaldeston, and announced his acceptance and implementation of its recommendations. The Report was critical of CSIS and recommended changes in relation to all facets of the service. More particularly, criticisms and recommendations were made about the excessive internal compartmentalization of CSIS operations, inadequate reliance on open sources, underdeveloped analytical capacity, lack of clear policy directives on targeting, the use of human sources and of intrusive investigative techniques, and inadequate training programs. The Report urged the re-opening of the CSIS staff college and the elimination of the Counter Subversion Branch.

On 29 March 1988, the Solicitor General released the SIRC's report to him of 25 March 1988, on CSIS's use of its investigative powers with respect to the labour movement. The Committee concluded that neither Marc André Boivin, one of CSIS's human sources, nor CSIS had targeted union members or unions for their labour activities as such. The report was critical of CSIS for retaining Mr. Boivin's services after they had ceased to be useful, for not having in place a policy to determine when the use of human sources was reasonably necessary, and for maintaining, adding to and utilizing R.C.M.P. Security Service files in a way that may have been beyond the agency's mandate as set out in the *CSIS Act*. The report indicated the SIRC'S satisfaction that both the Solicitor General and the Director of CSIS had moved expeditiously to deal with these difficulties.

In the *Thomson* case, an individual (Thomson) had been refused a position with the Department of Agriculture because of an unfavourable security assessment by CSIS. He appealed this decision to SIRC which conducted a hearing and recommended that he be given a positive security clearance. The Deputy Minister of Agriculture rejected this recommendation. On 7 March 1988, the Federal Court of Appeal ruled that because of the statutory structure of the *CSIS Act*, the SIRC's recommendations are binding on government. It also ruled that, because the Deputy Minister of Agriculture was exercising "administrative" powers, the Federal Court of Appeal did not have jurisdiction to make a binding ruling in this

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matter. On 17 June 1988, Dubé J. of the Federal Court, Trial Division, expressed his respect for the reasoning in the Federal Court of Appeal's *obiter* opinion, but declined to follow it. He held that the recommendations made by the SIRC in security clearance cases are not "decisions" and hence not binding on government. Dubé J.'s ruling was appealed to the Federal Court of Appeal. On 17 May 1990, a differently-constituted bench of the Federal Court of Appeal overruled Dubé J.'s decision and said he was bound by the initial appellate ruling. The *Thomson* decision was followed by Joyal J. on 4 October 1990 in the *Kwan Lihuen* case, which involved the removal of a security clearance from a Chinese language translator employed by CSIS. The Supreme Court of Canada on 25 January 1991 granted leave to appeal in the *Thomson* case. In reasons handed down in the *Thomson* case on 13 February 1992, the Supreme Court of Canada ruled that the SIRC's recommendations in security clearance cases are not binding on government.

On 13 December 1988, the SIRC issued its 1987-88 Annual Report on its review of CSIS activities. The SIRC indicated that CSIS had had its dark moments but had "turned the corner" -- the new director was providing active leadership. Although SIRC still had many criticisms of CSIS, it expressed its belief that the Service was on the right road.

The Committee reported its findings on studies of the CSIS counter-terrorism program and its intelligence assessment activities. Both programs were said to be sound, but requiring improvement to increase their operational effectiveness and enhance their strategic analytical capacities. The SIRC indicated that in the coming year it would be examining the CSIS counter-intelligence program and its investigations, if any, of the peace movement in Canada. The SIRC also expressed the hope of completing a review of CSIS resources and how they are used.

The Committee concluded that the *CSIS Act* is basically sound and carries out the basic principles enunciated by the McDonald Commission. Despite this broad conclusion, the SIRC suggested that questions in relation to the following issues should be pursued as part of the upcoming five-year review of the *CSIS Act:* security intelligence and public policy, security intelligence and the wider community, dissemination of security intelligence, definition of threats to the security of Canada,

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security clearances, issuance of and controls on warrants, improvements in security intelligence oversight and changes in access to information and privacy legislation in light of security intelligence constraints.

On 26 January 1989, the Federal Court of Appeal rendered its decision in the *Russell* case. In this case, an individual (Russell) wanted to know if he had been the subject of investigation by CSIS. The SIRC advised Russell that CSIS had done nothing improper or illegal. In a decision rendered from the Bench, Pratte J.A. ruled that the March 1988 letter from the SIRC to Russell was merely a "report of findings," not a "decision," and hence not subject to judicial review.

On 9 March 1989, Stephen Ratkai, who had pleaded guilty to charges under the *Official Secrets Act* that he had engaged in espionage activities on behalf of the Soviet Union, was sentenced to nine years' imprisonment.

On 23 March 1989, Marc André Boivin instituted litigation in the Federal Court against CSIS, the SIRC and the Solicitor General in which he claimed damages in the amount of half a million dollars. He sued CSIS for having revealed his activities on its behalf to the Sûreté du Québec, and the SIRC for having reported publicly on his activities without giving him an adequate opportunity to present his side of the events.

On 15 May 1989, the Canadian Civil Liberties Association initiated litigation in the Ontario Court (General Division) in which it requested a judicial declaration that certain provisions of the *CSIS Act* were in violation of the Charter of Rights and hence of no force or effect. Mr. Justice Potts of the Ontario Court (General Division) rendered a judgment on 16 August 1990 in which he concluded that the Canadian Civil Liberties Association had legal standing to continue its litigation. In reasons for judgment released on 25 March 1992, Mr. Justice Potts ruled that the *CSIS Act* was not in violation of the *Charter of Rights and Freedoms*.

On 13 October 1989, the SIRC issued its 1988-89 Annual Report. It indicated that its review of the past five years of CSIS activities had led it to believe that the Act is sound and that a civilian agency under political control and independent oversight has worked well in

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Canada. The Committee reported on its oversight of ministerial direction, agreements between CSIS and Canadian or foreign governments or agencies, warrants, public interest disclosures, unlawful acts, the report of the Director and the Certificate of the Inspector General.

The SIRC also reported on special studies it had conducted on counter-intelligence operations, CSIS and the peace movement, and problems of clandestine, illegal technology transfer. Because of the review of the *CSIS Act* then under way after five years of experience with the legislation, the SIRC included as an appendix to its Annual Report its submissions and 31 recommendations for legislative amendments. These recommendations dealt with such issues as the definition of "threats to the security of Canada," grievance procedures, warrants, complaints hearings, security clearances, accountability framework, foreign intelligence and human sources.

In the *Chiarelli* case, the Federal Court of Appeal decided on 23 February 1990 that the provision of the *CSIS Act* that allowed the SIRC to exclude complainants and their counsel from certain parts of its hearings was in violation of the *Charter of Rights*. The Supreme Court of Canada granted leave to appeal in this case. On 26 March 1992, the Supreme Court of Canada ruled that the provision of the *CSIS Act* allowing the SIRC to exclude complainants and their counsel from certain parts of hearings was not in violation of the Charter.

On 14 August 1990, the SIRC issued a report and recommendations involving the Canadian Armed Forces and Ms. M.D. Douglas, a former member. In this report, the SIRC was critical of the Forces for the way in which an investigation of Ms. Douglas' sexual orientation had been carried out and her security clearance withdrawn. Concluding that Ms. Douglas was not a security risk, it recommended that her security clearance be restored and that she be reinstated in her former employment. This decision has been appealed to the Federal Court of Appeal.

The SIRC 1989-90 Annual Report, issued on 10 October 1990, stated that CSIS was a stronger organization in 1990 than it had been in 1984, since when it had continued to gain credibility. The report reviewed ministerial directions, the CSIS Operational Manual, ministerial authoriza-

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tions, arrangements with other governments, and unlawful acts and disclosures. It also set out its findings on warrants, access to the Canadian Police Information Centre (CPIC), CSIS relations with the RCMP, the CSIS Counter-Terrorism Program, the CSIS Counter-Intelligence Program, the CSIS Analysis and Production Branch, security screening, immigration screening, campus operations and CSIS use of open sources. The SIRC also reported on special studies it had undertaken of CSIS and Native Canadians, exchanges of information and the "counter-subversion residue."

On 17 September 1991, Mr. J. Reid Morden resigned as Director of CSIS to become Under-Secretary of State for External Affairs. Raymond Protti, former Deputy Minister of Labour, was named Director of CSIS on 1 October 1991.

On 4 October 1991, the SIRC issued its 1990-91 Annual Report. It reported on judicial warrants; the Communications Security Establishment and CSIS; arrangements and exchanges of information with foreign and domestic agencies; CSIS activities during the Gulf War; changes in East Bloc countries; CSIS activities regarding Native peoples; file management and files inherited from the RCMP Security Service; and growth in the CSIS budget.

PARLIAMENTARY ACTION

A parliamentary role in the oversight of CSIS operations is provided for in s. 53 of the Act, which stipulates that the Solicitor General must lay the annual report of the SIRC before Parliament. Standing Order 46(4) of the House of Commons deems any report required by law to be tabled in Parliament to be permanently referred to a committee of the House. For SIRC reports, this is the Standing Committee on Justice and Solicitor General.

Another source of parliamentary input into the assessment of the legislation are s. 56 of the *CSIS Act* and s. 7 of the *Security Offences Act*, which were recommended by the Senate Committee. These sections provide that a committee of the House or of the House and the Senate is to conduct a review of the operation of the Acts within five years of their

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coming into force. That committee is to make a report, which will include "a statement of any changes" it recommends. The House of Commons set up a Special Committee on 27 June 1989 to conduct a review of the *CSIS Act* and the *Security Offences Act*. That Committee reported its findings and 117 recommendations on 24 September 1990.

The Committee's report, entitled "In Flux but not in Crisis," generally concluded that the Canadian security and intelligence system was sound and that any reforms should be based on the continuation and extension of already-established institutions. Its recommendations dealt with the definition of mandates, labour relations and human resources, the review roles of the Inspector General and the SIRC, the complaints roles of the SIRC and the RCMP Public Complaints Commission, and the establishment of a parliamentary sub-committee to monitor and review the security and intelligence community. The Committee called upon the government to respond to its report and recommendations within 150 days.

The government tabled its response, entitled "On Course: National Security for the 1990's," on 25 February 1991. The government set out its belief that legislative changes in the *CSIS Act* and the *Security Offences Act* were not needed. It further asserted that it was unwilling at this time to contemplate structural changes to the national security model in place. The response did undertake that, starting in 1992, the Solicitor General would at the time of tabling of Main Estimates also provide Parliament with a statement of national security issues facing Canada. This statement is to be accompanied by a public Annual Report, by the Director of CSIS, which will discuss the "threat environment." The government accepted the Committee recommendation that there be another parliamentary review of the *CSIS Act* and the *Security Offences Act*, and undertook to arrange for it to begin in 1998.

On 26 February 1991, a debate was held on an Opposition motion that the House of Commons concur in the Committee's report "In Flux but not in Crisis." The House adjourned that day without coming to a vote.

The House of Commons Standing Committee on Justice and Solicitor General, pursuant to a recommendation made in "In Flux but not in

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Crisis," established on 13 June 1991 a permanent Sub-Committee on National Security. The Sub-Committee held its first meeting on 18 June 1991.

In fulfillment of a commitment made by the government in "On Course: National Security for the 1990's", the Solicitor General made his first Annual Statement on National Security and tabled the CSIS Director's first Public Report in the House of Commons on 19 March 1992. These documents described the national security environment within which CSIS has to function. They concluded that, although the Cold War was over, the Service would continue to face challenges, especially in the areas of ensuring economic security and protecting Canada's technological interests. It was also indicated that CSIS would be assessing and reporting to the Solicitor General on the impact of the evolving security and intelligence environment on the Service's mandate.

CHRONOLOGY

1946 - With the increase of security functions assigned to the RCMP, personnel working in that area were for the first time organizationally separated from the Criminal Investigations Branch into the Special Branch.

1956 - The Special Branch was elevated to the Directorate level within the RCMP, under the command of an Assistant Commissioner.

1969 - The Royal Commission on Security recommended creation of a civilian security agency. The government decided against this, but promised to make the Special Branch more separate and increase the civilian staff.

1970 - The Special Branch became the Security Service, under the direction of a civilian Director General, Mr. John Starnes.

October 1970 - James Cross was kidnapped; Pierre Laporte was kidnapped and murdered. The *War Measures Act* was proclaimed.

1971-74 - Particularly, but not exclusively, in Quebec, the Security Service undertook a series of acts, many apparently illegal, to neutralize radical and separatist groups.

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27 March 1975 - The federal cabinet issued a directive governing the operations of the Security Service. It remained secret until 1978.

30 March 1976 - Cpl. R. Samson, on trial for an unrelated incident, revealed his participation in Operation Bricole in 1972 (a break-in and theft of files).

June 1977 - Former Security Service staff-sergeant Donald McCleery revealed to officials from the Department of Justice the details of other operations, including Operation Ham (the break-in and theft of PQ membership lists).

6 July 1977 - Solicitor General Fox announced the appointment of Mr. Justice D.C. McDonald to head a commission of inquiry into the allegations of RCMP wrongdoing.

June 1981 - Following the report of its own inquiry, the government of Quebec laid charges against 17 current or former RCMP members.

25 August 1981 - The final report of the McDonald Commission was made public.

18 May 1983 - Bill C-157 was given first reading in the House of Commons during the 1st Session of the 32nd Parliament.

29 June 1983 - The subject matter of Bill C-157 was referred to a special committee of the Senate, which in its November report recommended substantial amendment of the bill.

18 January 1984 - Bill C-9 was given first reading in the House of Commons during the 2nd Session of the 32nd Parliament. The bill incorporated most of the changes recommended by the Senate Committee.

21 June 1984 - After three months in committee, Bill C-9 was given third reading and passed by the House. Shortly thereafter it was passed by the Senate.

16 July 1984 - All but Part II of the *CSIS Act* was proclaimed in force.

31 August 1984 - Part II of the *CSIS Act*, which deals with warrants, was proclaimed in force.

29 November 1984 - The members of the SIRC were appointed, under the chairmanship of Ronald Atkey, a former Conservative cabinet minister.

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15 February 1985 - Richard Gosse, former deputy attorney general of Saskatchewan, was appointed Inspector General under the *CSIS Act*.

February 1985 - The federal government's spending estimates revealed that the CSIS would receive approximately $115 million to carry out its operations, and that staffing might involve about 1,800 person years.

February 1986 - The estimates revealed that the budget of the CSIS would amount to approximately $113 million.

12 June 1986 - The SIRC issued its 1985-86 Annual Report.

29 June 1987 - The SIRC issued its 1986-87 Annual Report.

22 July 1987 - The Solicitor General announced the establishment of a three-member independent advisory team to report by October 30, 1987 on the implementation of the SIRC's recommendations concerning counter-subversion and civilianization.

30 July 1987 - The Senate Special Committee on Terrorism and the Public Safety released its Report.

17 August 1987 - The Federal Court of Appeal, in a two-to-one decision in the *Atwal* case, upheld the warrant-granting provisions of the *CSIS Act* and allowed access with conditions to the affidavit behind a warrant application.

11 September 1987 - T.D. Finn resigned as Director of CSIS and was replaced by J. Reid Morden.

30 November 1987 - The Solicitor General released the independent advisory team's report and announced his acceptance of its recommendations.

21 December 1987 - Richard Gosse resigned as Inspector General.

7 March 1988 - The Federal Court of Appeal in the *Thomson* case ruled in an *obiter* opinion that SIRC recommendations were binding on government but declined to issue a binding ruling because it lacked jurisdiction.

29 March 1988 - The SIRC issued its Special Report on CSIS activities in relation to the labour movement and on the actions of Marc André Boivin.

17 June 1988 - Dubé J. of the Federal Court, Trial Division, ruled in the *Thomson* case that SIRC recommendations are not "decisions" and hence not binding on government (thus

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not following the Federal Court of Appeal's *obiter* of March 7, 1988 in this case).

18 July 1988 - Richard Thompson became Inspector General.

13 December 1988 - The SIRC issued its 1987-88 Annual Report.

26 January 1989 - The Federal Court of Appeal in the *Russell* case ruled that a letter from SIRC to a complainant is a "report of findings" devoid of any legal effect and hence not subject to judicial review.

9 March 1989 - Stephen Ratkai was sentenced under the *Official Secrets Act* to nine years' imprisonment for espionage.

23 March 1989 - Marc André Boivin sued CSIS, the SIRC and the Solicitor General in Federal Court for half a million dollars.

28 April 1989 - In Estimates tabled in the House of Commons, CSIS was allocated $157.3 million for fiscal year 1989-90, up from $148.6 million for fiscal year 1988-89.

15 May 1989 - The Canadian Civil Liberties Association initiated litigation in the Supreme Court of Ontario against the Attorney General of Canada seeking a declaration that certain provisions of the *CSIS Act* are of no force or effect because they are in violation of the Charter of Rights.

27 June 1989 - The House of Commons established a Special Committee to conduct the five-year review of the provisions and operation of the *CSIS Act* and the *Security Offences Act*. This Committee is to report by 16 July 1990.

28 June 1989 - The Special Committee of the Senate on Terrorism and Public Safety tabled its second and final report.

13 October 1989 - The SIRC issued its 1988-89 Annual Report.

30 November 1989 - John Bassett (Chairman) and Stewart McInnes (member) were appointed to the SIRC for three-year terms. The remaining members were re-appointed for two-year terms.

22 February 1990 - In Estimates tabled in the House of Commons, CSIS was allocated $190 million for Fiscal Year 1990-91, up from $157.3 million for Fiscal Year 1989-90 and an additional $8,112,000 in supplementary estimates for Fiscal Year 1989-90.

23 February 1990 - In the *Chiarelli* case, the Federal Court of Appeal ruled that the provision of the *CSIS Act* that allowed

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for the exclusion of complainants and counsel from SIRC hearings was in violation of the *Charter of Rights*.

17 May 1990 - The Federal Court of Appeal ruled that the Trial Division was bound by the initial appellate finding in the *Thomson* case.

14 August 1990 - The SIRC recommended that the Canadian Armed Forces restore Ms. M.D. Douglas' security clearance and reinstate her in her former employment.

16 August 1990 - Mr. Justice Potts of the Ontario Court (General Division) ruled that the Canadian Civil Liberties Association had legal standing to continue its ligitation.

24 September 1990 - The House of Commons Special Committee on the Review of the *CSIS Act* and the *Security Offences Act* tabled its report entitled "In Flux but not in Crisis."

4 October 1990 - Mr. Justice Joyal of the Federal Court followed the *Thomson* case in a decision in the *Kwan Lihuen* case.

10 October 1990 - The SIRC issued its 1989-90 Annual Report.

8 November 1990 - The Supreme Court of Canada granted leave to appeal in the *Chiarelli* case.

25 January 1991 - The Supreme Court of Canada granted leave to appeal in the *Thomson* case.

25 February 1991 - The government tabled "On Course: National Security for the 1990's", its response to the Report of the House of Commons Special Committee on the Review of the *CSIS Act* and the *Security Offences Act*.

26 February 1991 - A debate on a concurrence motion in the Report of the Special Committee on the Review of the *CSIS Act* and the *Security Offences Act* was held in the House of Commons.

13 June 1991 - The House of Commons Standing Committee on Justice and Solicitor General established a Sub-Committee on National Security.

18 June 1991 - The Sub-Committee on National Security met for the first time.

17 September 1991 - J. Reid Morden resigned as Director of CSIS.

1 October 1991 - Raymond Protti became Director of CSIS.

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4 October 1991 - The SIRC issued its 1990-91 Annual Report.

17 January 1992 - Richard Thompson resigned as Inspector General.

13 February 1992 - The Supreme Court of Canada rendered its decision in the *Thomson* case.

19 March 1992 - The Solicitor General made his first Annual Statement on National Security and tabled the CSIS Director's first Public Report in the House of Commons.

25 March 1992 - Mr. Justice Potts of the Ontario Court (General Division) ruled in the *Canadian Civil Liberties Association* case.

26 March 1992 - The Supreme Court of Canada rendered its decision in the *Chiarelli* case.

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